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May 10, 2022

By ECF

The Honorable Gary L. Sharpe
United States District Judge
James T. Foley U.S. Courthouse
445 Broadway, Room 411
Albany, NY 12207

Re: *United States of America v. New York State Board of Elections, et al.*
10-CV-1214 (GLS)

Dear Judge Sharpe:

On behalf of Proposed Plaintiff-Intervenors Belinda de Gaudemar and Susan Schoenfeld, we write to bring to the Court's attention two affidavits filed yesterday in *Harkenrider v. Hochul*, Case No. E2022-0116CV, the redistricting litigation taking place in New York's Steuben County Supreme Court. In the affidavits, which are attached as Exhibits A and B, the Co-Executive Directors of the New York State Board of Elections ("SBOE") make clear that even though New York has not received this Court's approval to hold a later federal primary election, it is not preparing to hold the federal primary on June 28, 2022; it is only planning to hold an election for state and local offices on that date. *See* Affidavit of Todd D. Valentine, Exhibit A, ¶ 8 ("the Board, and local boards of elections, are . . . preparing for the August congressional and State Senate primaries ordered by [the Steuben County Supreme] Court.").

In other words, the SBOE continues to flout the clear terms of this Court's 2012 order. New York is bound by this Court's 2012 order, unless and until this Court grants approval to change the date or otherwise modifies the order. Under that Order, the state must hold its non-presidential federal primaries on the fourth Tuesday in June unless 1) "New York enacts legislation resetting the non-presidential federal primary election for a date that complies fully with all UOCAVA requirements," and 2) that date "is approved by this court." 2012 Order at 8 (Jan. 27, 2012), ECF No. 59; *see also* *EEOC v. Local 638*, 889 F. Supp. 642, 649 (S.D.N.Y. 1995) ("Parties are bound by a court order until the court modifies the order or releases them from it, and defendants who act without first asking the court to clarify the order act[] at their own peril." (quotation marks omitted)), *rev'd in part on other grounds*, *EEOC v. Local 638*, 81 F.3d 1162 (2d Cir. 1996).

The SBOE does not contest that it is required to seek this Court's approval in order to modify the federal primary election date. *See* ECF 98-7 (Proposed Intervenors' Ex. 7), at 19:19–20 ("THE COURT: Why haven't you gone back to Judge Sharpe? MR. QUAIL: We should

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP

Page 2

have.”). And yet, the SBOE continues to prepare for a federal primary election in August without approval, in direct contravention of the clear language of this Court’s 2012 order.

The 2012 order issued as a direct result of New York’s history of noncompliance with federal law governing the transmission of military and overseas ballots. For the reasons set forth in their letter brief (ECF 98), Proposed Plaintiff-Intervenors oppose the SBOE’s request for a supplemental order allowing for an August primary in 2022, because they are concerned that New York—given all of the administrative steps that must occur to certify the results of a primary election and the risk of a recount or litigation—will fail to mail overseas voters absentee ballots in time for them to vote those ballots, return them, and have them counted in the general election.

Counsel for Proposed Plaintiff-Intervenors are available at the Court’s convenience to address this emergent matter.

Dated: May 10, 2022

Respectfully Submitted,

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**Pro hac vice applications to be submitted.*

Enclosures